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SUSAN Y. SOONG  
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NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

FILED

SEP 24 2018

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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Attorneys for the United States

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

ORIGINAL

UNITED STATES OF AMERICA ex rel.  
ZACHARY SILBERSHER, et al.,

Plaintiffs,

v.

JANSSEN BIOTECH, INC., JANSSEN  
ONCOLOGY, INC., JANSSEN RESEARCH &  
DEVELOPMENT, LLC, and JOHNSON &  
JOHNSON,

Defendants.

Case No. 17-cv-07250-KAW

THE GOVERNMENT'S NOTICE OF  
ELECTION TO DECLINE INTERVENTION;  
[PROPOSED] ORDER

FILED UNDER SEAL

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the right only to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,

U.S. NOTICE OF DECLINATION; [PROPOSED] ORDER  
CASE NO. 17-CV-7250 KAW

59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should the relator, the States, or the defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the United States with an opportunity to be heard before ruling or granting its approval.

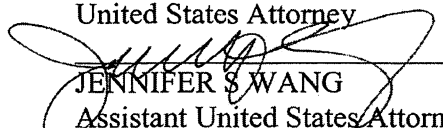
Furthermore, 31 U.S.C. § 3730(c)(3) permits the United States to be served with copies of all pleadings filed in the action. Accordingly, the undersigned counsel for the United States will file a Notice of Appearance for the purpose of receiving ECF notifications of filings in this case. The United States reserves its right to order any deposition transcripts and to intervene in this action, for good cause, at a later date. The United States also reserves its right to seek the dismissal of the relator's action or claim pursuant to 31 U.S.C. § 3730(c)(2)(A), and to request a stay of discovery pursuant to 31 U.S.C. § 3730(c)(4).

The States have received additional time to make an intervention decision, and the current seal period expires on October 26, 2018. The United States requests that the relator's Complaint, the Summons, the Case Management Order, this Notice, and the attached proposed Order be unsealed after the States have made an intervention decision, and that the seal be lifted as to all matters subsequently occurring after the States' intervention decision. The United States requests that all other papers on file in this action through the date of this Notice of Election to Decline Intervention remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Respectfully submitted,

ALEX G. TSE  
United States Attorney



JENNIFER S. WANG  
Assistant United States Attorney

Dated: September 17, 2018

[PROPOSED] ORDER

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the Court rules as follows:

IT IS ORDERED THAT:

1. The Complaint, Summons, Case Management Order, Government's Notice of Election to Decline Intervention, and this Order will be unsealed after the States have filed a notice of intervention or declination in this action;

2. The relator shall serve this Order and The Government's Notice of Election to Decline Intervention upon the defendant after service of his complaint;

3. All other contents of the Court's file in this action through the date of this Order will remain under seal and will not be made public or served upon the defendant;

4. The seal shall be lifted as to all other matters occurring in this action after the States have filed a notice of intervention or declination;

5. Counsel for the United States shall file a notice of appearance in this action for the purpose of receiving ECF notifications of all pleadings and motions filed in this action, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time; and

6. Should the relator, the States, or the defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with an opportunity to be heard before ruling or granting its approval, in accordance with 31 U.S.C. § 3730(b)(1).

IT IS SO ORDERED,

This 24<sup>th</sup> day of September, 2018.



KANDIS A. WESTMORE  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**THE GOVERNMENT'S NOTICE OF ELECTION TO DECLINE INTERVENTION;  
[PROPOSED] ORDER**

FILED UNDER SEAL

to be served this date upon the party(ies) as follows:

- ☐ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☐ **CERTIFIED MAIL (# )** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.
- ☒ **ELECTRONIC MAIL**
- ☐ **FEDERAL EXPRESS**
- ☐ **PERSONAL SERVICE (BY MESSENGER)**
- ☐ **FACSIMILE (FAX)** Telephone No.: See Below


to the party(ies) addressed as follows:

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**Deputy Attorney General**  
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**San Diego, CA 92108**  
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**Fax: (619) 688-4200**  
**E-mail: David.Zlotnick@doj.ca.gov**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on September 18, 2018 at San Francisco, California.

  
 \_\_\_\_\_  
**BONNY WONG**  
 Legal Assistant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA ex rel.  
ZACHARY SILBERSHER, et al,

No. C17-7250 KAW

Plaintiff(s),

v.

CERTIFICATE OF SERVICE

JANSSEN BIOTECH, INC., JANSSEN  
ONCOLOGY, INC., JANSSEN RESEARCH  
& DEVELOPMENT, LLC and JOHNSON &  
JOHNSON,

Defendant(s).

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 25, 2018, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person(s) listed below, by depositing said envelope in the U.S. Mail; or by placing said copy into an inter-office delivery receptacle located in the Office of the Clerk.

Jennifer Wang  
US Attorney's Office  
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David Zlotnick  
Attorney General's Office  
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San Diego, CA 92108

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San Francisco, CA 94108

SUSAN Y. SOONG, CLERK

BY: Susan Imbriani  
Susan Imbriani, Courtroom Deputy